

**O-040-05**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO 2023342  
IN THE NAME OF ACROSS JUMBULANCES  
OF THE TRADE MARK:**

**JUMBULANCE**

**AND**

**AN APPLICATION FOR RECTIFICATION  
UNDER NO 81712  
BY  
ACROSS TRUST**

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**In the matter of registration no 2023342  
in the name of Across Jumbulances  
of the trade mark:  
JUMBULANCE  
and  
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under no 81712  
by  
Across Trust**

### **BACKGROUND**

1) On 8 June 1995 Across Trust, a United Kingdom registered charity, which I will refer to as AT, applied to register the trade mark **JUMBULANCE** (the trade mark) for *transportation of passenger; travel arrangement services*, in class 39 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended. The application was given no 2023342. The trade mark was registered on 22 March 1996. On 20 March 2002 the Trade Marks Registry received a letter from AT advising of a change of address. This change of address was recorded. On 2 February 2004 the Trade Marks Registry received a letter from Across Jumbulances, with which was enclosed a form TM21 and “supporting documentation”, a form TM11 and a cheque for £200. The TM11 and cheque were for renewal of the trade mark registration. However, as it was too early to renew the registration, the money was refunded.

2) The form TM21 was completed by John Harnden Higgs, who indicated that he was a trustee of Across Jumbulances. The declaration of form TM21 states:

“I declare that there has been no change in the actual proprietorship of the application(s) or registration(s).”

Part of the documentation that was included with the form TM21 were pages downloaded from the Charity Commission’s website on 30 January 2004. These pages relate to AT and show that accounts for the financial years beginning on 1 January 2000 were overdue. The declared objects of AT were as follows:

“THE RELIEF OF SICKNESS AND SUFFERING THE ADVANCEMENT OF RELIGION AND IN FURTHERANCE OF THESE OBJECTS THE CONSTRUCTION AND OPERATION OF A PURPOSE-BUILT VEHICLE OR VEHICLES TO TRANSPORT INVALIDS SICK PERSONS HANDICAPPED DISABLED AND INFIRM WHETHER MOBILE SEMI-MOBILE CHAIRBOUND OR CONFINED TO BED TO THE SHRINE OF OUR LADY OF LOURDES FRANCE OR TO SUCH OTHER PLACES OF PILGRIMAGE

AS THE TRUSTEES SHALL IN THEIR ABSOLUTE DISCRETION FROM TIME TO TIME DECIDE.”

A copy of a page from the Companies House website was also enclosed. This related to Across Jumbulances which is shown to be a private company which was incorporated on 8 September 2003. The page was downloaded on 30 January 2004. A newsletter entitled “Across Ambulances”, for Winter 2003, was enclosed. The newsletter refers to the formation of Across Jumbulances as a company limited by guarantee with charitable status. It goes on to state that all of the operations, assets and liabilities of Across Scotland will be transferred to Across Jumbulances from 1 January 2004. A copy of a page from “The Universe” of July 15 2001 is enclosed. In an article it is stated that AT “is on the verge of going bust” and “will be wound up on October 31”. Mr Higgs also enclosed a letter which is headed “Sheet 1). The letter, inter alia, states:

“Trademark 2023342 is currently registered in the name of ACROSS Trust. This charity ceased trading in October 2001 and its assets were sold or reclaimed and nearly all of its 40 employees became unemployed.

This charity has carried on the work of the ACROSS Trust and currently operates three Jumbulances taking the sick and disabled to Lourdes.

As the ACROSS Trust has ceased its operations to Lourdes and ACROSS Jumbulances in now providing the Jumbulance service to Lourdes, we would ask for the trademark WO ‘Jumbulance’ to be registered in the name of ACROSS Jumbulances and trade mark registration be renewed.”

The letter is signed by Mr Higgs who identified himself as being a trustee of AT.

3) On 10 February 2004 the Trade Marks Registry advised Mr Higgs that the change of name and address that he had requested had been recorded.

4) On 15 April 2004 an application was received from AT for rectification of the register. The statement of grounds for the application is formed by way of a witness statement by Colin Charles Line and a letter of clarification from him. Mr Line states that he is chairman of the trustees of AT. He states that the ownership of the “applicant company” has not changed. Mr Line states the following in his letter:

- AT is a national charity formed over thirty years ago.
- It is not an operative charity but is recognised by the Charity Commissioners as still being a legal entity. AT owns a residential property in Lourdes and two trade marks – JUMBULANCE (no 2023342) and ACROSS (no 2023304).
- Across Jumbulances appears to be the successor of AT’s previous Scottish branch office, known as Across Scotland. It has no legal right to the trade marks.
- AT intends renewing the trade mark when it becomes due.

- The error AT wishes to rectify is the transfer of ownership of registration no 2022342 without its knowledge or permission. It wishes the registration to be returned to it.
- Mr Higgs has never been a trustee of AT.
- AT does not now offer trips for the disabled but the assets are still in position whilst the trustees are trying to negotiate with like-minded charities.
- At no stage has anyone been in touch with AT to confirm any details relating to the recording of a new proprietor of the trade mark.

5) Mr Higgs filed a counterstatement for Across Jumbulances. Mr Higgs states the following:

- He has never been a trustee of AT. He states that he signed the covering letter for form TM21 as trustee of Across Jumbulances.
- The submission of forms TM21 and TM11 was simply in response to advice received from the Patent Office.
- AT has no assets to satisfy its charitable objects. Its only asset is land and property in Lourdes, which is being sold to a property developer to clear the debts of the trustees of AT.
- AT has no employees, no income or expenditure and no office. A copy of a print-out from the website of the Charity Commission is attached showing that in the financial year 2003, income and expenditure were both nil.
- Mr Line states that AT is trying to negotiate with like-minded charities. However, Across Jumbulances is one of only two registered charities that undertook to maintain trips for the disabled by operating Jumbulances purchased from the bank when AT collapsed in 2001, it has no correspondence on file from the trustees of AT seeking to negotiate over the matter.
- A copy of a print-out from the website of the Charity Commissions, dated 4 August 2004, is exhibited. This relates to AT. Mr Higgs emphasises the following:

“9. The trustees employed the services of an Insolvency Practitioner. They have disposed of all the buses. The trustees still have a great deal of existing and ongoing liabilities but are seeking solutions to these problems through negotiation. The trustees have personally to date paid in excess of £100k into the charity. When the trustees have sold all the remaining assets to meet the charity’s liabilities it can be removed from the Register of Charities.”

- Across Jumbulances should retain the trade mark as it clearly satisfies its charitable objects of providing trips for the disabled.

6) Neither side filed evidence. The sides were advised that it was considered that a decision could be made without recourse to a hearing. However, they were advised that they retained their rights to be heard. There was no request for a hearing. No written submissions were received.

## DECISION

7) Section 64 of the Trade Marks Act 1994 (the Act) states:

“64.-(1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification may be made either to the registrar or to the court, except that -

- (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The registrar may remove from the register matter appearing to him to have ceased to have effect.”

8) AT was the registered proprietor of the trade mark and claims that it should still be so recorded. Consequently, I consider that AT has sufficient interest to make an application for rectification.

9) Section 22 of the Act states:

“A registered trade mark is personal property (in Scotland, incorporeal moveable property).”

The trade mark was in the ownership of AT. At no time did AT transfer the ownership of the trade mark to Across Jumbulances. The trade mark as an item of property was part of the assets of AT. Across Jumbulances is not a successor in business. There was no assignment of the trade mark by AT or by the liquidators. In its counterstatement Across Jumbulances refers to the records of the Charity Commission relating to the insolvency of AT:

“9. The trustees employed the services of an Insolvency Practitioner. They have disposed of all the buses. The trustees still have a great deal of existing and ongoing liabilities but are seeking solutions to these problems through negotiation. The trustees have personally to date paid in excess of £100k into the charity. When the trustees have sold all the remaining assets to meet the charity’s liabilities it can be removed from the Register of Charities.”

The trade mark is clearly an asset that should be available for the trustees to realise. There is quite simply no legal basis for Across Jumbulances being the registered proprietor. To claim to be the registered proprietor it would have to show that the trade mark had been transferred to it. It makes no claim to this effect. It seems to consider that as it is continuing a similar line of operation to that followed by AT and because of its links with Across Scotland, that it can lay claim to ownership of the trade mark. There is nothing to substantiate or allow such a claim. The notes to form TM21 and change of proprietor’s name or address on the Patent Office website clearly state:

“Please note: If the ownership of the trade mark has changed, this must be recorded as an assignment.”

The declaration that Mr Higgs signed on form TM21 states:

“I declare that there has been no change in the actual proprietorship of the application(s) or registration(s).”

By completing form TM21, whether he understood or not, Mr Higgs was stating that there had been no change of ownership, merely a change of name of the owner. This was clearly not the case. Two different legal entities are involved. Whether by error or not, Mr Higgs also identified himself in “Sheet 1”, as a trustee of AT; which he states he never was. Across Jumbulances has no rights in law to the trade mark.

10) Mr Higgs states that he filed forms TM11 and TM21 as a result of advice from the Trade Marks Registry. There is no indication in the files, or from Mr Higgs, as to exactly what this advice was or from whom it was received. The information supplied with the form TM21 by Mr Higgs is indicative that he was trying to effect a change of ownership of the trade mark. I assume that the Trade Marks Registry accepted Mr Higgs declaration that there had been no change in ownership and did not delve any deeper. It strikes me that in this case, taking into account the documentation furnished by Mr Higgs, that it would have been appropriate for it to have delved a little deeper and made further enquiries.

**11) I have no doubt that the recording of Across Jumbulances as the registered proprietor of the trade mark was an error. I direct that the error is deemed never to have been made and that the trade mark should have at all times been in the name of Across Trust and Across Trust should be recorded as the registered proprietor.**

## **COSTS**

12) AT has been successful in its application for rectification and so is entitled to a contribution towards its costs.

13) In Adrenalin Trade Mark, BL 0/040/02, Simon Thorley QC, sitting as the Appointed Person on appeal, observed that:

“ It is correct to point out that the Registrar’s practice on costs does not specifically relate to litigants in person but in my judgment it could not be that a litigant in person before the Trade Mark Registry could be placed in any more favourable position than a litigant in person before the High Court as governed by the CPR. The correct approach to making an award of costs in the case of a litigant in person is considered in CPR Part 48.6.”

Part 48.6 of the Civil Procedure Rules referred to in the above passage provides as follows:

“48.6—(1) This Rule applies where the court orders (whether by summary assessment or detailed assessment) that costs of a litigant in person are to be paid by any other person.

(2) The costs allowed under this Rule must not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.”

AT appointed an agent, form TM16 was received on 23 September 2004. However, prior to this it was not professionally represented. All the documentation in this case was filed prior to 23 September 2004, so I consider it appropriate that AT’s costs should be reduced by one third.

**14) I order Across Jumbulances to pay Across Trust the sum of £200. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.**

**Dated this 11th day of February 2005**

**David Landau  
For the Registrar  
the Comptroller-General**